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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRENKY SETIAWAN,

Petitioner,

v.

MICHAEL B. MUKASEY,
United States Attorney General,

Respondent.

No. 05-70826

Agency No. A95-177-132

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 22, 2007**

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Frenky Setiawan, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an Immigration

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Judge's ("IJ") denial of his application for asylum, withholding of removal and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252, and deny the petition for review.

Substantial evidence supports the IJ's and BIA's determination that Setiawan's experiences in Indonesia do not rise to the level of past persecution. *See Prasad v. INS*, 47 F.3d 336, 339-340 (9th Cir. 1995). Substantial evidence further supports the BIA's conclusion that petitioner failed to establish a well-founded fear of future persecution, because he failed to demonstrate the requisite individualized risk of persecution. *Cf. Sael v. Ashcroft*, 386 F.3d 922, 927 (9th Cir. 2004).

Accordingly, Setiawan is not eligible for asylum.

Because Setiawan fails to establish eligibility for asylum he necessarily fails to qualify for the higher standard under withholding of removal. *See Prasad*, 47 F.3d at 340.

Finally, Setiawan has waived any challenge to the denial of CAT relief because he failed to raise the issue in his opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

PETITION FOR REVIEW DENIED.